IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12380 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HOJEFA HAIDERBHAI VORA

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DUTTA WITH MR AR SHAIKH for Petitioner

MR RM CHAUHAN, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 10.4.2003 passed by the Police Commissioner, City of Ahmedabad, against him, in exercise of powers under Section 3(1) of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 10.4.2003.

2. The grounds of detention served upon the petitioner and placed on record reveal that the detaining authority mainly took into consideration two aspects of the matter. Firstly, registration of crimes against the petitioner, in all four in number, under Sections 457 and 380 of the IPC, and the second aspect is, in respect of in-camera statements, as recorded by the proposing authority on 7/8th April, 2003 and verified by the detaining authority on 9.4.2003, where the anti-social activities of the petitioner is revealed by the witnesses through the incidents on 15.3.2003 and 26.3.2003. From the above, the order impugned came to be passed against the petitioner.

3. Learned Advocate Ms. Banna Dutta with learned Advocate Mr. A.R. Shaikh for the petitioner and learned AGP Mr. R.M.Chauhan for the respondents were heard at length. Learned AGP Mr. Chauhan placed on record the affidavit-in-reply of the detaining authority, which is also taken into consideration.

4. Out of many contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be dealt with and disposed of on the sole ground whether the order passed and impugned in this petition is vitiated by non-application of mind by the detaining authority. It is apparent from the record that out of four crimes registered against the petitioner, the petitioner was under judicial custody in three crimes registered against him while he was on bail in one crime registered against him. The detaining authority in this respect reached to the subjective satisfaction that in the crimes registered against the petitioner, in which he was in judicial custody, he was likely to be released on bail and was likely to continue his illegal activities, the order of detention came to be served upon the petitioner in judicial custody. It was contended therefore that there was no cogent material before the detaining authority to reach to the subjective satisfaction that the petitioner was likely to be released on bail and was likely to continue his illegal activities on releasing him on bail by the court. As against that, the learned AGP has drawn my attention to

para 17 of the affidavit-in-reply filed by the detaining authority, wherein the detaining authority has stated that, the detaining authority was aware of the fact that the petitioner detenu was in judicial custody, in view of the learned AGP that, the order is not vitiated on the ground of non-application of mind. Learned AGP has placed reliance upon a decision of the Apex Court in the matter of AHMED NASSAR vs. STATE OF TAMIL NADU AND OTHERS, reported in (1999) 8 SCC 473.

5. From the rival contentions, it clearly transpires that there was no cogent material before the detaining authority to come to the conclusion and to reach the subjective satisfaction that the petitioner was likely to be released on bail and was likely to continue the illegal activities thereafter. In the above said decision of the Apex Court in the matter of Ahamed Nassar vs. State of Tamil Nadu, as relied upon by the learned AGP, in para 46, the Supreme Court observed that before coming to the conclusion, there was material before the detaining authority in the shape of order dated 12.4.1999 rejecting the bail application of the detenu and the contents of the bail application dated 1.4.1999 and, therefore, the detaining authority came to the conclusion that the petitioner was likely to be released on bail. The Supreme Court further observed in para 47 that since there was material before the detaining authority in shape of bail application and the order rejecting the bail, the case could not be said to be of no material and therefore the subjective satisfaction of the detaining authority as to likelihood of his being released on bail was upheld in that case by the Apex Court. While in this case, it is apparent from the grounds that there was no material or cogent material before the detaining authority to come to the conclusion that in the crimes registered at Serial Nos. 1, 2 and 3, the petitioner was likely to be released on bail. The case therefore is squarely covered by a decision of the Apex Court in the matter of Amrutlal and Others vs. Union Government through Secretary, Ministry of Finance and Others as reported in AIR 2000 SC 3675. In this view of the matter, the order impugned in this Special Civil Application is required to be quashed and set aside on this ground alone.

6. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 10.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at

liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair